



**Commissioner of Domestic Taxes v RSM Eastern Africa Limited Liability Partnership (Tax Appeal E197 of 2021) [2025] KEHC 6618 (KLR) (Commercial and Tax) (20 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6618 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
TAX APPEAL E197 OF 2021  
JWW MONG'ARE, J  
MAY 20, 2025**

**BETWEEN**

**COMMISSIONER OF DOMESTIC TAXES ..... APPELLANT**

**AND**

**RSM EASTERN AFRICA LIMITED LIABILITY  
PARTNERSHIP ..... RESPONDENT**

*(Being an appeal against the judgment of the Tax Appeals Tribunal  
at Nairobi dated 1st October 2021 in Tax Appeal No. 396 of 2020)*

**JUDGMENT**

**Introduction and Background**

1. The Appellant (“the Commissioner”) conducted an audit for the period January 2018 to May 2018 and detected inconsistencies between input VAT by the Respondent and output VAT by the respective suppliers. The Commissioner proceeded to serve the Respondent with an inconsistency notice and a reminder letter dated 4<sup>th</sup> July 2019 and the Respondent through its letters dated 14<sup>th</sup> May 2019 and 18<sup>th</sup> September 2019 sought to amend the inconsistencies. The Commissioner issued an auto assessment order dated 15<sup>th</sup> November 2019 for the period of April 2018 and an additional assessment on VAT was raised. The Respondent objected to the assessment order through its letter of 5<sup>th</sup> December 2019 and was issued with an objection application acknowledgment receipt on the same date on the assessed amount of Kshs.619,724.99/=. After considering the objection, the Commissioner, in its letter dated 21<sup>st</sup> July 2020 made an objection decision (“the Objection Decision”) amending the VAT assessment to Kshs. 52,692.70/=.
2. Dissatisfied with the Objection Decision, the Appellant lodged an appeal with the Tax Appeals Tribunal (“the Tribunal”) which rendered a decision on 1<sup>st</sup> October 2021 whereby the Objection



Decision relating to input VAT on hiring of cabs(taxis) amounting to Kshs.19,141.60/= was set aside. This decision by the Tribunal has precipitated the filing of the present appeal by the Commissioner which is grounded on the Memorandum of Appeal dated 26<sup>th</sup> November 2021. The Respondent has responded to the appeal through the Statement of Facts dated 10<sup>th</sup> June 2022. The appeal was disposed by way of written and oral submissions by the parties' respective counsel and I will make relevant references to the same in my analysis and determination below.

### **Analysis and Determination.**

3. As per section 56(2) of the *Tax Procedures Act* (Chapter 469B of the Laws of Kenya) ("the TPA"), "An appeal to the High Court or to the Court of Appeal shall be on a question of law only". This means that an appeal is limited to matters of law does not permit the appellate court to substitute the Tribunal's decision with its own conclusions based on its own analysis and appreciation of the facts (See *John Munuve Mati v Returning Officer Mwingi North Constituency, Independent Electoral and Boundaries Commission & Paul Musyimi Nzengu* [2018] KEHC 8738 (KLR))
4. The Commissioner faults the Tribunal's interpretation of section 17(4) of the VAT Act (Chapter 476 of the Laws of Kenya), failing to appreciate the fact that the Respondent's ordinary course of continuous and regular business was not selling or dealing in or hiring of passenger cars or mini buses and failing to appreciate that no evidence was tendered by the Respondent to prove that this was their ordinary course of continuous and regular business. The said section 17(4) provides as follows:
  - 4) A registered person shall not deduct input tax under this Act if the tax relates to the acquisition, leasing or hiring of—
    - (a) passenger cars or mini buses, and the repair and maintenance thereof including spare parts, unless the passenger cars or mini buses are acquired by the registered person exclusively for the purpose of making a taxable supply of that automobile in the ordinary course of a continuous and regular business of selling or dealing in or hiring of passenger cars or mini buses; or
    - (b) entertainment, restaurant and accommodation services unless—
      - (i) the services are provided in the ordinary course of the business carried on by the person to provide the services and the services are not supplied to an associate or employee; or
      - (ii) the services are provided while the recipient is away from home for the purposes of the business of the recipient or the recipient's employer:

Provided that no tax shall be charged on the supply where no input tax deduction was allowed on that supply under this subsection.

5. The Tribunal found that from the evidence on record, the Respondent did indeed show proof that it shared by way of ETR Invoices from some taxi companies which supported the assertion that it was hiring taxis to further the business of the company. However, the Commissioner contends that the Respondent could not claim input VAT as it is not in the business of selling, hiring or leasing passenger vehicles whereas the Respondent maintains that aforementioned section permits any person who is in the business of selling, leasing, or hiring passenger vehicles to claim input VAT.
6. Determination of this issue turns on the interpretation of section 17(4) above. It is now trite that when it comes to interpretation of tax legislation, the statute must be looked at using slightly different lenses as the language imposing the tax must receive a strict construction leaving no room for intendment or implication(see *Cape Brandy Syndicate v I.R. Commissioners* [1921] 1KB, *Mount Kenya Bottlers Ltd*



& 3 others v Attorney General & 3 others [2019] KECA 500 (KLR) and Stanbic Bank Kenya Limited v Kenya Revenue Authority [2009] KECA 427 (KLR)]. In Stanbic(supra) the appellate court held that terms in tax statutes must be interpreted in their natural and ordinary meaning and that the issue of intention or intendment does not arise.

7. Reading through the above provision, I note that the input VAT deduction is available to the registered person if the passenger cars or mini buses are acquired by the registered person exclusively for the purpose of making a taxable supply of that automobile in the ordinary course of a continuous and regular business of selling or dealing in or hiring of passenger cars or mini buses' I am in agreement with the Commissioner that the use of the word "exclusively" is not idle and is salient in interpreting the scope and application of that provision. Black's Law Dictionary, 10th Edition (2014) defines "Exclusively" as "Only; to the exclusion of all others; without admission of others to participation." This means something is restricted to a single entity or group, barring all others from involvement. Therefore, the input VAT deduction is not available to any person as advanced by the Respondent but only to those who are in the continuous and regular business of selling or dealing in or hiring of passenger cars or mini buses and that the said cars or mini buses were acquired specifically for that purpose.
8. From the evidence, it was never demonstrated by the Respondent that it is in the ordinary, continuous and regular business of selling, dealing or hiring of passenger cars and mini buses so as to benefit from the input deduction under the provision of section 17(4) above. I am inclined to agree with the Commissioner that the Tribunal misapprehended and misinterpreted the said provision and arrived at an erroneous decision that the Respondent could claim and deduct input VAT from this provision. It misapprehended the evidence that the Respondent was not exclusively in the business of selling, dealing or hiring of passenger cases or minibuses and as such, could not benefit from the said section 17(4). This error of misinterpretation and misapprehension of the law and evidence on record is sufficient to warrant the court's intervention.

### **Conclusion and Disposition.**

9. In the upshot, I find that the Commissioner's appeal has merit and it is hereby allowed. The judgment of the Tribunal dated 1<sup>st</sup> October 2021 is set aside and the Commissioner's Objection Decision dated July 21, 2020 is upheld. There is no order as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 20<sup>TH</sup> DAY OF MAY 2025**

.....  
**J.W.W. MONG'ARE**  
**JUDGE**

